IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7629 of 2001
with
Special Civil Application No.10059 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMJIBHAI PARBATBHAI PARMAR

Versus

KESHOD NAGARPALIKA

Appearance:
MR BA VAISHNAV for the Petitioner.
MS SEJAL K MANDAVIA for Respondent No. 1
Mr.Patel, Assistant GOVERNMENT PLEADER,
for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/10/2001

ORAL JUDGEMENT

Leave to amend.

So far as Special Civil Application No.7629 of

2001 is concerned, Rule. Ms.Mandavia appears and waives service of rule on behalf of the respondent No.1. Mr.Patel, learned AGP, appears for respondent No.2 and waives service of Rule for respondent No.2.

So far as Special Civil Application No.10059 of 2001 is concerned, Rule. Mr.Vaishnav appears and waives service of rule on behalf of the respondent.

With the consent of both the parties, the matters are taken up for final hearing.

So far as Special Civil Application No.7629 of 2001 is concerned, the same is filed by the workman, who had raised Industrial Dispute, which was numbered as Reference (LCJ) No.245 of 1997. By the Award dated 28.9.1999, the said Reference was allowed and the employer, i.e. Keshod Municipality, was directed to reinstate the said petitioner on the original post, with continuity of service and full back wages. Since the said Award was not implemented by the Nagarpalika, the petitioner-employee has challenged the said action by filing Special Civil Application No.7629 of 2001, in which he has prayed that the Nagarpalika should be directed to implement the said Award immediately.

So far as Special Civil Application No.10059 of 2001 is concerned, the same has been filed by the Keshod Municipality, challenging the aforesaid Award on merits, by which the workman was ordered to be reinstated in service with continuity of service and full back wages.

I have heard both the learned Advocates.

So far as Special Civil Applicaiton No.10059 of 2001 is concerned, it was argued by Ms.Mandavia that the respondent therein has not served for the stipulated period of 240 days in the preceding year and, therefore, the Labour Court has committed an error apparent on the face of the record in coming to the conclusion that the concerned workman has served for more than 240 days and, therefore, his services could not have been terminated without following the appropriate procedure of law. However, the Labour Court has given detailed reasoning in the impugned Award in coming to the conclusion that the concerned workman had served for more than 240 days in the preceding year. The Labour Court has also considered the fact that the Municipality had not placed on record any documentary evidence to justify their say that the concerned workman has not served for the aforesaid period.

After considering the various judgments and after considering the factual aspect of the matter, the aforesaid finding of fact was given by the Labour Court. The said finding, in my view, which is based on the evidence on record, cannot be interfered with by this Court in a petition under Article 226/227 of the Constitution of India. In any case, it cannot be said that the aforesaid finding is contrary to the evidence on record, especially when the Nagarpalika failed to produce any satisfactory evidence before the Tribunal to justify their say that the concerned workman had not served for the stipulated period. It is not in dispute that the Nagarpalika has not produced any Muster Roll or any documentary evidence for dislodging the say of the workman. In that view of the matter, so far as the order of reinstatement is concerned, the same is not required to be interfered with.

Ms.Mandavia, learned Advocate, argued that it is not a case in which full back wages could have been given to the concerned workman. She submitted that the concerned workman was serving as a daily rated employee and as and when any need was there, he was called for services. Considering the facts and circumstances of the case, therefore, I am of the opinion that this is not a case in which Award of back wages could have been passed by the Labour Court especially when the concerned workman was appointed only on daily rated basis and as per the requirement of the Department. The Award of the Labour Court is accordingly modified to the said extent in so far as payment of back wages is concerned. Accordingly, the order of reinstatement is confirmed. The Nagarpalika is directed to reinstate the concerned workman forthwith and, in any case, within a period of two weeks from today.

So far as the order of back wages is concerned, the said Award is set aside. It is clarified that the concerned workman will be entitled to his regular salary from the date of the order of the Labour Court and whatever amount is required to be paid to him on that basis, should be paid to him, preferably within a period of one month from today. It is clarified that so far as the rest of the order of the Labour Court is concerned, the same is confirmed and the respondent will be required to be reinstated on his original post as per the direction given by the Labour Court in the Award, with continuity of service, except payment of back wages, which is awarded by the Labour Court.

Both these petitions are partly allowed to the aforesaid extent. Rule is partly made absolute to the aforesaid extent with no order as to costs.

Direct service is permitted.

24th October, 2001 (P.B. Majmudar, J.)

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(apj)